

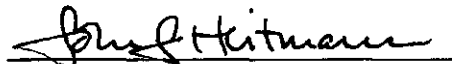
determination as to whether retirement of certain copper loops or copper subloops by the incumbent LEC will serve the public interest, consistent with Section 51.337(c).

As proposed, Section 51.337(e) provides that no incumbent LEC shall retire copper loops or copper subloops until such time as the Commission acts to grant or deny its Application, and the Petition of any interested party opposing its Application, upon its determination that such retirement serves the public interest. This proposed rule would prevent incumbent LECs from retiring copper loops while the Commission conducts its public interest assessment. Preserving the status quo is consistent with the presumption that copper loop retirement does *not* serve the public interest and allows the Commission an opportunity to conduct a meaningful review.

#### IV. CONCLUSION

For the reasons set forth herein, Petitioners respectfully request that the Commission initiate a public rulemaking proceeding to amend certain of its Part 51 rules applicable to retirement of copper loops and copper subloops by the incumbent LECs.

Respectfully submitted,



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# **EXHIBIT A**

## Proposed Modifications to FCC Rules

### *§51.319 Specific unbundling requirements.*

(a) Local loops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with Section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optonics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

#### (3) Fiber loops.

##### (i) Definitions.

(A) Fiber-to-the-home loops. A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).

(B) Fiber-to-the-curb loops. A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective customer's premises.

(ii) New builds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC deploys such a loop to an end user's customer premises that previously has not been served by any loop facility.

(iii) Overbuilds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop or the fiber-to-the-curb loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loops pursuant to paragraph (a)(3)(iv) of this section.

(B) An incumbent LEC that maintains the existing copper loops pursuant to paragraph (a)(3)(iii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iv) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop or fiber-to-the-curb loop on an unbundled basis.

(iv) Retirement of copper loops or copper subloops. The terms "retire" or "retirement" shall mean the act of removing copper loops or copper subloops from service, and shall include, at minimum (a) physically disconnecting, disabling, or rendering any portion of a copper loop or copper subloop technically incapable of providing service, or (b) permanently removing the copper loop or copper subloop from the conduit, pole attachment or controlled environment in or on which the copper facility was housed. Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in Section 251(c)(5) of the Act and in §51.325 through §51.335; and

(B) Any applicable state requirements; and

(C) The formal application procedures for retirement of copper loops or copper subloops set forth in § 51.337.

§51.325 Notice of network changes: Public notice requirement.

(a) An incumbent local exchange carrier ("LEC") must provide public notice regarding any network change that:

(1) Will affect a competing service provider's performance or ability to provide service;

(2) Will affect the incumbent LEC's interoperability with other service providers; or

(3) Will affect the manner in which customer premises equipment is attached to the interstate network.

(4) Will result in the retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in §51.319(a)(3).

(b) For purposes of this section, interoperability means the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

(c) Until public notice has been given in accordance with §51.325 through §51.335, an incumbent LEC may not disclose to separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors), information about planned network changes that are subject to this section.

(d) For the purposes of §51.325 through §51.335, the term services means telecommunications services or information services.

§ 51.327 Notice of network changes: content of notice.

(a) Public notice of planned network changes must, at a minimum, include:

(1) The carrier's name and address;

(2) The name and telephone number of a contact person who can supply additional information regarding the planned changes;

(3) The implementation date of the planned changes;

(4) The location(s) at which the changes will occur;

(5) A description of the type of changes planned (information provided to satisfy this requirement must include, as applicable, but is not limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and

(6) A description of the reasonably foreseeable impact of the planned changes.

(b) The incumbent LEC also shall follow, as necessary, procedures relating to confidential or proprietary information contained in §51.335.

*§51.329 Notice of network changes: methods for providing notice.*

(a) In providing the required notice to the public of network changes, an incumbent LEC may use one of the following methods; provided, however, that for an incumbent LEC's proposed retirement of copper loops or copper subloops pursuant to § 51.319(a)(3)(iv), the incumbent LEC also shall provide notice in writing to each information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network, unless the Commission authorizes in advance, for good cause shown, another form of notice to such parties:

(1) Filing a public notice with the Commission; or

(2) Providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. If an incumbent LEC uses any of the methods specified in paragraph (a)(2) of this section, it also must file a certification with the Commission that includes:

(i) A statement that identifies the proposed changes;

(ii) A statement that public notice has been given in compliance with §51.325 through §51.335; and

(iii) A statement identifying the location of the change information and describing how this information can be obtained.

(iv) Where notice in writing of an incumbent LEC's proposed retirement of copper loops or copper subloops is required under paragraph (a) of the section, a copy of the written notification submitted by the incumbent LEC to each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network, and a Certificate of Service, which shall include:

(A) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each information service provider and telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(B) The name and address of each such information service provider and telephone exchange service provider upon which the notice was served.

(b) Until the planned change is implemented, an incumbent LEC must keep the notice available for public inspection, and amend the notice to keep the information complete, accurate and up-to-date.

(c) Specific filing requirements. Commission filings under this section must be made as follows:

(1) The public notice or certification must be labeled with one of the following titles, as appropriate: "Public Notice of Network Change Under Rule §51.329(a)," "Certification of Public Notice of Network Change Under Rule §51.329(a)," "Short Term Public Notice Under Rule §51.333(a)," or "Certification of Short Term Public Notice Under Rule §51.333(a)."  
"Public Notice of Retirement of Copper Loops(s) and/or Copper Subloop(s) Under Rule § 51.329(a)," or "Certification of Public Notice of Retirement of Copper Loop(s) and/or Copper Subloop(s) Under Rule § 51.329(a)."

(2) Two paper copies of the incumbent LEC's public notice or certification, required under paragraph (a) of this section, must be sent to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which this filing is received by the Secretary is considered the official filing date.

(3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Wireline Competition Bureau, Federal Communications Commission, Washington, DC 20554." The diskette copy must be on a standard 3-1/2 inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later compatible versions, and shall be in a word-processing format designated, from time-to-time, in public notices released by the Bureau. The diskette must be submitted in "read only" mode, and must be clearly labeled with the carrier's name, the filing date, and an identification of the diskette's contents.



§51.331 Notice of network changes: timing of notice.

(a) An incumbent LEC shall give public notice of planned changes, other than its proposed retirement of copper loops or copper subloops pursuant to § 51.319(a)(3)(iv), at the make/buy point, as defined in paragraph (b) of this section, but at least 12 months before implementation, except as provided below:

(1) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short term notice procedures provided in §51.333.

(b) For purposes of this section, the make/buy point is the time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.

(1) For purposes of this section, a product is any hardware or software for use in an incumbent LEC's network or in conjunction with its facilities that, when installed, could affect the compatibility of an interconnected service provider's network, facilities or services with an incumbent LEC's existing telephone network, facilities or services, or with any of an incumbent carrier's services or capabilities.

(2) For purposes of this section a definite decision is reached when an incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes any action toward implementation of the change within its network.

(c) An incumbent LEC shall give public notice of its proposed retirement of copper loops or copper subloops pursuant to § 51.319(a)(3)(iv) at least twelve (12) months before the date on which the incumbent LEC intends to implement such retirement, which date shall be specifically stated in the public notice. An incumbent LEC shall not retire copper loops or copper subloops, except to the extent permitted by order of the Commission, subject to formal application procedures set forth in § 51.337.

~~(e) Competing service providers may object to incumbent LEC notice of retirement of copper loops or copper subloops and replacement with fiber-to-the-home loops or fiber-to-the-curb loops in the manner set forth in §51.333(e).~~

**§51.333 Notice of Network Changes: Short term notice, objections thereto and objections to retirement of copper loops or copper subloops.**

(a) Certificate of service. If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by §51.327(a) or §51.329(a)(2), as applicable. The certificate of service shall include:

(1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(2) The name and address of each such telephone exchange service provider upon which the notice was served.

(b) Implementation date. The Commission will release a public notice of filings of such short term notices or notices of replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(1) Short term notice. Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

~~(2) Replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops. Notices of replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section. Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber to the home loops or fiber to the curb loops shall be subject to the short term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days notice of such a change.~~

(c) Objection procedures for short term notice and notices of replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops. An objection to an incumbent LEC's short term notice or to its notice that it intends to retire copper loops or copper subloops and replace such loops or subloops with fiber to the home loops or fiber to the curb loops may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

(d) Response to objections. If an objection is filed, an incumbent LEC shall have until no later than the fourteenth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

(1) Provide information responsive to the allegations and concerns identified by the objectors;

(2) State whether the implementation date(s) proposed by the objector(s) are acceptable;

(3) Indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and

(4) Provide any other relevant information.

(e) Resolution. If an objection is filed pursuant to paragraph (c) of this section, then the Chief, Wireline Competition Bureau, will issue an order determining a reasonable public

notice period, provided however, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to §51.329(b).

~~(f) Resolution of objections to replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops. An objection to a notice that an incumbent LEC intends to retire any copper loops or copper subloops and replace such loops or subloops with fiber to the home loops or fiber to the curb loops shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90 day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper loops or copper subloops at issue for replacement with fiber to the home loops or fiber to the curb loops.~~

**§51.335 Notice of network changes: confidential or proprietary information.**

(a) If an incumbent LEC claims that information otherwise required to be disclosed is confidential or proprietary, the incumbent LEC's public notice must include, in addition to the information identified in §51.327(a), a statement that the incumbent LEC will make further information available to those signing a nondisclosure agreement.

(b) Tolling the public notice period. Upon receipt by an incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled until the parties agree on the terms of a nondisclosure agreement. An incumbent LEC receiving such a request must amend its public notice as follows:

(1) On the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and

(2) On the date the nondisclosure agreement is finalized, to specify a new implementation date.

§ 51.337 Procedures for Retirement of Copper Loops or Copper Subloops

(a) Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, an incumbent LEC shall provide public notice of such retirement in accordance with the requirements set forth in §51.325 through §51.335, and shall notify and submit a copy of its application to the public utility commission and the governor of the State in which the retirement is proposed.

(b) The incumbent LEC shall file with the Commission, on or after the date on which the public notice has been provided in accordance with the requirements set forth in § 51.325 through § 51.335 an application which shall contain the following:

(1) Caption "§ 51.337 Application for Retirement of Copper Loops or Copper Subloops;"

(2) Information listed in § 51.327(a)(1) through (6);

(3) A statement that public notice has been provided in accordance with the requirements set forth in § 51.325 through § 51.331, including a brief description of the dates and methods of such public notice. Where notice in writing of an incumbent LEC's proposed retirement of copper loops or copper subloops is required under paragraph (a) of the section, a copy of the written notification submitted by the incumbent LEC to each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network, and a Certificate of Service, which shall include:

(A) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network; and

(B) The name and address of each such information service provider and telecommunications service provider upon which the notice was served.

(4) A description of the service area, including geographic area, population and general character (i.e., whether a business or residential community) currently served by the copper loops or copper subloops that the incumbent LEC intends to retire;

(5) The name of any other carrier or carriers providing telephone service to the community;

(6) A description of any previous retirement of copper loops or subloops serving the community affected by the application, which the applicant has requested during the 12 months preceding the date of filing the application, and whether such application was approved by the Commission;

(7) A statement of any present plans for future retirement of copper loops or copper subloops to the community affected by the application; and

(8) Any other information that the Commission may require.

(c) Each application for retirement of copper loops or copper subloops shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience and necessity, and will not adversely affect other service providers or consumers.

(1) For purposes of this section, the Commission shall presume that retirement of copper loops and copper subloops does not serve the public interest, convenience and necessity. The applicant may rebut such presumption by a showing that retirement of the subject copper loops or copper subloops:

(a) Serves the public interest, convenience and necessity; and

(b) Is necessary to deploy fiber-to-the-home or fiber-to-the-curb loops to the end user's customer premises that currently is served by the existing copper facilities; such that deployment of fiber-to-home and fiber-to-the-curb loops to such customer premises would not be possible if the subject copper loops and copper subloops were maintained.

(d) Petition to deny application for retirement of copper loops or copper subloops. Any interested party may file a petition to deny an incumbent LEC's application for retirement of copper loops or copper subloops, in accordance with § 1.939, within 30 days following the release of the Commission's public notice of such application. Such petition to deny shall contain specific allegations of fact to show that the petitioner is a party in interest, and that a grant of the application would be inconsistent with the public interest, convenience and necessary, or is not necessary to permit deployment of the fiber facilities described in the application. Such allegations of fact shall, except for those of which official notice may be taken, be supported by an affidavit of a person or persons with personal knowledge thereof. The applicant may file an opposition to any petition to deny, and the petitioner may file a reply to such opposition, in accordance with § 1.45, and allegations of fact or denials thereof shall similarly be supported by an affidavit.

(e) Until the Commission has ruled on the application for retirement of copper loops or copper subloops, and any petition to deny such application, the incumbent LEC may not retire the subject copper loops or copper subloops for replacement with fiber-to-the-home or fiber-to-the-curb loops.

# **EXHIBIT B**